IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH, AT JAIPUR

S. B. CRIMINAL MISC. PETITION NO. 931/2001

SMT. RAMPATI
v
RAMSWAROOP MEENA

Date of Judgment: **JULY 19, 2007**

Hon'ble Mr. Justice R. S. Chauhan

Mr. S. N. Meena for the petitioner.
Mr. B.K. Sharma, Public Prosecutor.
None for the non-petitioner.

By Court:

The petitioner has challenged the order dated 12.10.98 passed by the Family Court No.2, Jaipur whereby the learned Judge has directed the non-petitioner to pay maintenance to the petitioner from 2.11.95 to 2.11.96 and onwards but has not directed him to pay the previous maintenance in accordance with the order dated 30.3.88.

According to the petitioner the brief facts of the case are that she was married to the non-petitioner in accordance with the Hindu rites and customs. During the marriage she had given birth to two children. However, unfortunately both of them expired. Thereafter the non-petitioner started treating her

cruelly. Thus, she had no option but to leave the matrimonial home. Subsequently, she had filed an application under Section 125 of the Criminal Procedure Code ('the Code' for short). After recording the evidence and after hearing the arguments vide order dated 30.3.88, the Family Court directed the non-petitioner to pay a maintenance of Rs. 200/- per month with effect from 7.11.87. However, despite the said order, the non-petitioner did not pay any maintenance to the petitioner. Hence on 13.1.89 the petitioner filed an application before the Family Court for the implementation of the order dated 30.3.88. Despite the various dates in the case, the case was not decided. Eventually, the petitioner stopped attending the court. Thus, the petitioner is not in a position to state as to the final outcome of the said application. Nonetheless on 2.11.96, she again filed an application before the Family Court and prayed that the previous maintenance amount should be recovered from the non-petitioner. Vide order dated 12.10.98 the Family Court allowed the application but noted that since the present application was filed on 2.11.96, therefore, the petitioner was entitled to recover the maintenance only for the previous twelve

months i.e. from 2.11.95 till 2.11.96. Therefore, the learned Judge passed the order in favour of the petitioner. However, the petitioner is aggrieved by the fact that the previous maintenance from 1988 till 1995 has not been paid to her by the non-petitioner. Hence, this petitioner before this court.

Mr. S.N. Meena, the learned counsel for the petitioner has argued that despite the existence of the order dated 30.3.88, till present not a single penny has been paid to the petitioner although she has approached the court twice. Moreover, neither the property of the non-petitioner has been attached, nor a warrant of arrest has been issued against him. Therefore, it is a case of failure of justice. Even after the passing of the impugned order dated 2.11.98, the non-petitioner has not paid a single penny to the petitioner.

On the other hand, the learned Public Prosecutor has pointed out that according to the proviso to sub-section(3) of Section 125 of the Code the application has to be submitted within a period of one year from the date when the maintenance amount becomes due. Therefore, the learned

Judge was certainly justified in directing the recovery of the maintenance from 2.11.95 till 2.11.96 as the application was submitted on 2.11.96.

We have heard both the learned counsels and have perused the impugned order.

Undoubtedly, Section 125 of the Code imposes a legal duty upon the husband to maintain the wife in case the wife is unable to maintain herself. It equally imposes a duty on the courts to ensure that in case the husband fails to pay the maintenance, to issue a warrant for levying the amount due and to sentence such a person for a maximum period of one month or until the payment is no sooner made. However, the said power can be exercised only if this application under sub-section(3) is moved from one year from the date the amount is due. In the light of sub-section (3) of Section 125, the learned Judge was certainly justified in limiting the period of recovery one year prior to the date of submission of the application.

According to the learned counsel for the petitioner despite the existence of the orders dated 30.3.88 and 12.10.98

the petitioner has not been paid a single penny by the non-petitioner. Despite the service of notice upon him, the non-petitioner has not put in appearance before this court. Considering the fact that the petitioner has not been paid any amount, we grant the liberty to the petitioner to move an application before the Family Court for issuance of warrant of arrest against the non-petitioner. In the matter of maintenance, the trial court should be extremely sensitive to the need of the woman. Therefore, the learned trial court is directed to act upon any application moved by the petitioner with a sense of urgency and seriousness.

With these observations, this petition is disposed of.

(R.S. CHAUHAN) J.

MRG.